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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 ZOBEL MEXICO, S.A. de C.V.,
12 Plaintiff,
13 v.
14 AUTO EXPRESSIONS, LLC and
KRACO ENTERPRISES, LLC,,
15 Defendants.
16

Case No.:

COMPLAINT

17 Plaintiff Zobel Mexico, S.A. de C.V., for its complaint against Defendants,
18 avers as follows:

19 **PARTIES**

20 1. Plaintiff Zobel Mexico, S.A. de C.V. ("Zobel") is a company duly
21 formed and existing under the laws of Mexico, with its principal place of business in
22 Hermosillo, Sonora, Mexico.

23 2. On information and belief, Defendant Auto Expressions, LLC ("Auto
24 Expressions") is an Illinois limited liability company, which is not in "Good
25 Standing" in Illinois, with its principal office at 505 E. Euclid Avenue, Compton,
26 California 90224, that is registered to do business in the State of California, and does
27 business in the County of Los Angeles, State of California.

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1 3. On information and belief, Defendant Kraco Enterprises, LLC (“Kraco”)
2 is an Illinois limited liability company, with its principal office at 505 E. Euclid
3 Avenue, Compton, California, 90224, that is registered to do business in the State of
4 California, and does business in the County of Los Angeles, State of California.

5 4. On information and belief, Defendant Kraco is the sole member and the
6 manager of Defendant Auto Expressions.

7 **JURISDICTION AND VENUE**

8 5. This Court has subject matter jurisdiction over Zobeles’ claims, pursuant
9 to 28 U.S.C. § 1332, because complete diversity exists, and the amount in controversy,
10 exclusive of interest and costs, exceeds \$75,000.

11 6. On information and belief, this Court has personal jurisdiction over
12 Kraco and Auto Expressions because Kraco and Auto Expressions have their principal
13 offices in California, do business in California, at all relevant times have done
14 business in California, and because the claims in this case arise out of or relate to the
15 business which Kraco and Auto Expressions conducted in California and there is a
16 causal link between Kraco’s and Auto Expressions’ conduct in California and the
17 claims in this case.

18 7. Venue is proper in the Central District of California, under 28 U.S.C.
19 § 1391, because Kraco and Auto Expressions have their principal offices in this
20 district, and therefore reside in this district, and because a substantial part of the events
21 or omissions giving rise to the claim occurred in this district.

22 **FACTS COMMON TO ALL COUNTS**

23 8. Zobeles, among other things, purchases and exports from Mexico on a
24 wholesale basis various products including air freshener products for automobiles.

25 9. Until recently, and at all relevant times, Kraco and Auto Expressions
26 sold, among other things, the air freshener products they purchased from Zobeles.

27 10. Zobeles has had a business relationship with Kraco and Auto Expressions,
28 under which Kraco and Auto Expressions jointly issued purchase orders to Zobeles for

1 air freshener products, listing Kraco as the “Bill To” entity. Zobeles then manufactured
2 such products solely for use by Auto Expressions and Kraco, and Zobeles then shipped
3 the products to Kraco’s and Auto Expressions’ Warehouse in Compton, California,
4 and sent the applicable invoices to Kraco and Auto Expressions at their Compton
5 California headquarters.

6 11. However, beginning in or around April or May 2017, Defendants Kraco
7 and Auto Expressions stopped paying Zobeles for the products that Zobeles shipped and
8 invoiced to Kraco and Auto Expressions. Kraco and Auto Expressions failed to pay
9 any of the invoices issued during the period beginning in or around April or May 2017
10 and ending in or around December 31, 2017 (the “Unpaid Invoices”), for a total
11 amount owed to Zobeles of \$839,944.00.

12 12. On January 18, 2018, Zobeles sent a letter to Kraco, asserting that Kraco
13 (and Auto Expressions) owed Zobeles the amount of \$839,944.00, as of that date.

14 13. On January 26, 2018, Zobeles sent Kraco and Auto Expressions a "Credit
15 Memo" in the amount of \$3,096.92 (the “Credit Amount”), for certain
16 reimbursements claims by Kraco, leaving the amount due and owing to Zobeles as
17 \$836,847.08.

18 14. On February 7, 2018, Todd Michalik, the CEO of Kraco, wrote an email
19 to Zobeles, stating, on behalf of Kraco, that Kraco intended “to pay all amounts due”
20 to Zobeles for the unpaid invoices.

21 15. Neither Kraco nor Auto Expressions, however, has paid Zobeles any part
22 of the amount outstanding regarding the unpaid invoices.

23 16. On or about April 2, 2018, non-party Niteo Products, LLC (“Niteo”),
24 announced that it had purchased the air-care assets of Kraco and Auto Expressions.

25 17. On information and belief, Kraco and Auto Expressions were insolvent
26 at the time of this sale to Niteo, or became insolvent as a result of this sale to Niteo.

27 18. On information and belief, immediately prior to the sale to Niteo, certain
28 assets of Kraco and Auto Expressions (the “secured assets”) were pledged as security

1 for a loan from PNC Bank National Association (“PNC”) to Kraco and Auto
2 Expressions (among others), and certain assets of Kraco and Auto Expressions were
3 not pledged as security for said loan (the “unsecured assets”).

4 19. On information and belief, as part of the sale to Niteo, Kraco and Auto
5 Expressions transferred the unsecured assets to Niteo without receiving any
6 compensation for the unsecured assets.

7 20. On information and belief, Defendants sold all of their other assets to
8 other purchasers. Upon information and belief, Defendants sold certain other
9 unsecured assets without receiving compensation therefor.

10 21. On information and belief, the proceeds of the sale to Niteo and other
11 purchasers were delivered to PNC Bank, as claimed partial repayment for the debt
12 allegedly owed to PNC by Kraco and Auto Expressions, among others, and none of
13 the proceeds was made available to satisfy other creditors of Kraco or Auto
14 Expressions.

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract, All Defendants)**

17 22. Plaintiff reincorporates all of its allegations contained in Paragraph 1
18 through 21 of this Complaint as if fully restated herein.

19 23. Plaintiff had a valid and enforceable contract with Defendant Kraco for
20 the sale of air freshener products.

21 24. Plaintiff had a valid and enforceable contract with Defendant Auto
22 Expressions for the sale of air freshener products.

23 25. Plaintiff has fully performed its obligations under the terms of its
24 contract with Kraco.

25 26. Plaintiff has fully performed its obligations under the terms of its
26 contract with Auto Expressions.

27 27. Defendants Kraco and Auto Expressions have both materially breached
28 the contract by failing to pay for the products that Plaintiff shipped to them as

1 identified in the Unpaid Invoices (less the Credit Amount).

2 28. As a direct and proximate result of Defendants' breach of contract,
3 Plaintiff has been damaged in the amount of \$836,847.08, plus interest, costs, and
4 expenses.

5 **SECOND CAUSE OF ACTION**

6 **(Account Stated – Against Both Defendants)**

7 29. Plaintiff reincorporates all of its allegations contained in Paragraph 1
8 through 28 of this Complaint as if fully restated herein.

9 30. Defendants owe Plaintiff money from the purchase and sale transactions,
10 the total of which (\$836,847.08) is set forth in the Zobebe letter to Kraco dated January
11 18, 2018 (\$839,944.00), minus the credit memo issued by Zobebe to Kraco
12 (\$3,096.92) on January 26, 2017 (\$839,944.00 - \$3,096.92 = 836,847.08). Plaintiff
13 and Kraco, by words or conduct, agreed that the amount stated in the account was the
14 correct amount owed to Plaintiff. Defendants promised to pay the stated amount to
15 Plaintiff. Defendants, however, have failed to pay the stated amount to Plaintiff.

16 31. As a direct and proximate result of Defendants' failure to pay the Unpaid
17 Invoices (less the Credit Amount), Plaintiff has been damaged in the amount of
18 \$836,847.08, plus interest, costs, and expenses.

19 **THIRD CAUSE OF ACTION**

20 **(Unjust Enrichment – Both Defendants)**

21 32. Plaintiff reincorporates all of its allegations contained in Paragraph 1
22 through 31 of this Complaint as if fully restated herein

23 33. As a result of the foregoing, Kraco and Auto Expressions both received
24 a benefit, at the expense of Zobebe.

25 34. It would be unjust to permit either Kraco or Auto Expressions to retain
26 such benefit, without compensation to Zobebe.

27 35. Kraco and Auto Expressions should be ordered to make restitution to
28 Zobebe, in the amount of \$836,847.08, plus interest, costs, and expenses.

FOURTH CAUSE OF ACTION

(Fraudulent Conveyance – Civil Code § 3439.05 – Both Defendants)

36. Plaintiff reincorporates all of its allegations contained in Paragraph 1 through 35 of this Complaint as if fully restated herein.

37. As a result of the foregoing, each Defendant fraudulently transferred assets to one or more third parties while it was insolvent (or as a result of which it became insolvent) and without receiving reasonably equivalent assets for certain of the assets transferred.

38. As a direct and proximate result of Defendants' breach of contract and fraudulent conveyances, Plaintiff has been damaged in an amount of \$836,847.08.

WHEREFORE, Plaintiff Zobelex Mexico, S.A. de C.V. respectfully requests judgment against Defendants Kraco Enterprises, LLC and Auto Expressions, LLC as follows:

1. Damages, jointly and severally, against Kraco and Auto Expressions, on its first, second, and third counts, in the amount of \$836,847.08;

2. The costs and expenses of this action, together with the maximum pre-judgment and post-judgment interest permitted by law; and

3. Any and all further relief as to the Court appears just and proper.

DATED: June 6, 2018

Respectfully submitted,

WITHERS BERGMAN LLP

By:



Michael S. Brophy

Bryan C. Hathorn

Attorneys for Plaintiff Zobelex Mexico, S.A.
de C.V.